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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ALONNA MITSCH, an individual,

Plaintiff,

v.

CITY OF PORTLAND, a municipal corporation, **KYLE GREEN** in his individual capacity, **KEN LE** in his individual capacity, and **ANDREW BRAUN** in his individual capacity;

Defendants.

Case No.

COMPLAINT

42 USC § 1983 Civil Rights Actions - Violation of Equal Protection, Unlawful Retaliation Against Speech; False Arrest (State tort); Assault (State tort); Battery (State tort);

DEMAND FOR JURY TRIAL

INTRODUCTION

1.

This is a civil rights action. On August 17, 2019, Plaintiff Alonna Mitsch, a Black woman, donned clothing expressing BLACK LIVES MATTER and joined a large demonstration in downtown Portland to peacefully protest the presence and ideology of the Proud

Boys, a violent right-wing neofascist group whose members and supporters consist of and have close relationships with neo-Nazis and white supremacists. That afternoon, Portland Police arrested Ms. Mitsch after she twerked to NWA's popular song "Fuck Tha Police" and all but rolled out the red carpet for the Proud Boys. Defendants arrested Ms. Mitsch because she was a Black woman supporting Black Lives Matter and engaging in expressive conduct that was critical of police.

PARTIES

2.

Plaintiff Alonna Mitsch (hereinafter "Ms. Mitsch" or "Plaintiff"), is, and at all material times hereto was, a resident of Multnomah County, State of Oregon.

3.

Defendant City of Portland ("City" or "defendant") is and at all material times hereto has been a municipal corporation in the State of Oregon.

4.

The Portland Police Bureau ("PPB"), a department of the City, is the law enforcement agency of the City.

5.

Defendant Kyle Green (hereinafter "Green" or "defendant") is or was at all material times an PPB officer, acting under color of law, and is sued in his individual capacity.

6.

Defendant Ken Le (hereinafter "Le" or "defendant") is or was at all material times an PPB officer, acting under color of law, and is sued in his individual capacity.

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7.

Defendant Andrew Braun (hereinafter “Braun” or “defendant”) is or was at all material times an PPB officer, acting under color of law, and is sued in his individual capacity.

FACTUAL ALLEGATIONS

A. Ms. Mitsch, a Black Woman, Attended a Protest in Support of Black Lives Matter and Against White Supremacy and Police Violence on August 17, 2019.

8.

Ms. Mitsch is a Black woman and a mother. She has been and is a supporter of the Black Lives Matter movement.

9.

On August 17, 2019, the Proud Boys, a violent right-wing white supremacist and neofascist group, held a demonstration in downtown Portland near Tom McCall Waterfront Park. Proud Boys founders, members, and supporters consist of and have close relationships with neo-Nazis and white supremacists, have flown Confederate flags in downtown Portland, have openly supported U.S.-backed Chilean dictator Augusto Pinochet, have made numerous sexist and anti-Muslim statements, and have a known history of demonstrating with the intent to incite and engage in violence, including in the Portland area.¹

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¹ See, e.g., SOUTHERN POVERTY LAW CENTER, *Proud Boys*, available at <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys>; KOIN 6, *‘Pinochet Did No Wrong’: Who is Pinochet?* <https://www.koin.com/local/multnomah-county/pinochet-did-no-wrong-who-is-pinochet> (Aug. 4, 2018); see also Lois Beckett, *Capitol Attack: More Than 60 Proud Boys Used Encrypted Channel to Plan, Indictment Says*, THE GUARDIAN, available at <https://www.theguardian.com/us-news/2021/mar/20/four-proud-boys-leaders-indicted-capitol-riot-donald-trump> (describing Proud Boys’ role in the January 6, 2020 attack on the U.S. Capitol).

10.

That day, on August 17, Ms. Mitsch joined hundreds of other counter-demonstrators to protest the Proud Boys' presence and ideology because she, like other counter-demonstrators of good conscience, believed in taking a stand against the hateful and dangerous ideology and acts that groups like the Proud Boys and Patriot Prayer represent and propagate. Ms. Mitsch joined the "Be the Spectacle" counterprotest, organized by Popular Mobilization with the goal of dressing in absurd and spectacular costumes to thwart Proud Boys' photo opportunities and to drown out their hate speech with protest art, dance, music, and other expression. Other sponsors and supporters of the August 17, 2019 counter-demonstrations included community groups as well as religious and political figures.

11.

Ms. Mitsch attended the demonstration wearing a hat with clear lettering stating "BLACK LIVES MATTER" and also wore a shirt with the message Black Lives Matter. Throughout the day, she marched with other demonstrators, and engaged in expressive conduct protesting the Proud Boys, white supremacy, and the police.

12.

B. Defendants Arrest Ms. Mitsch After She Twerked to NWA's "Fuck Tha Police."

Around approximately 2:55pm on August 17, counter-demonstrators marched in the streets and sidewalks around the SW 3rd Avenue and SW Oak area in downtown Portland. Ms. Mitsch crossed the street and heard music blaring NWA's popular song, "Fuck Tha Police." She briefly twerked to the music in the bike lane area of the crosswalk:



Figure 1: Photograph of Plaintiff twerking at SW 3rd Avenue and SW Oak Street in front of PPB officers.²

13.

At the time Ms. Mitsch was in the crosswalk area donned in obvious “Black Lives Matter” clothing engaging in expressive conduct with a message critical of the police, there were other demonstrators both in the crosswalk area and marching in the middle of the street. This included similarly-situated individuals who were white and Non-Black, and who were not at the time engaging in expressive conduct with the message critical of police such as “fuck tha police.”

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² Alex Milan Tracy (@AlexMilanTracy), TWITTER, with accompanying text: “Alonna Mitsch twerks briefly to @NWA_Music’s “Fuck Tha Police” in Portland, Ore, on August 17, 2019, as antifascist protesters march through the streets against Proud Boys gathering in the city.” (posted Mar. 4, 2020 at 10:47 AM) available at <https://twitter.com/AlexMilanTracy/status/1235275567651405825>.

14.

After Ms. Mitsch briefly twerked, she continued to cross the street. She was already on the sidewalk, when, without warning, PPB officers jumped off their police vehicle to chase Ms. Mitsch:



Figure 2: Photograph of PPB officers running after Plaintiff to arrest her.³

15.

Without warning and while Ms. Mitsch was on the sidewalk, PPB officers including Defendants Green, Le, and Braun, ran up on Ms. Mitsch from behind, pulled or twisted

³ Alex Milan Tracy (@AlexMilanTracy), TWITTER, thread (*see supra*, FN 2) with accompanying text, “Seconds later, she [Ms. Mitsch] is chased by riot police.” (posted Mar. 4, 2020 at 10:47 AM) available at <https://twitter.com/AlexMilanTracy/status/1235275568981008385>.

her arms, swung her down to the ground from behind, and arrested her with too-tightly bound restraints.

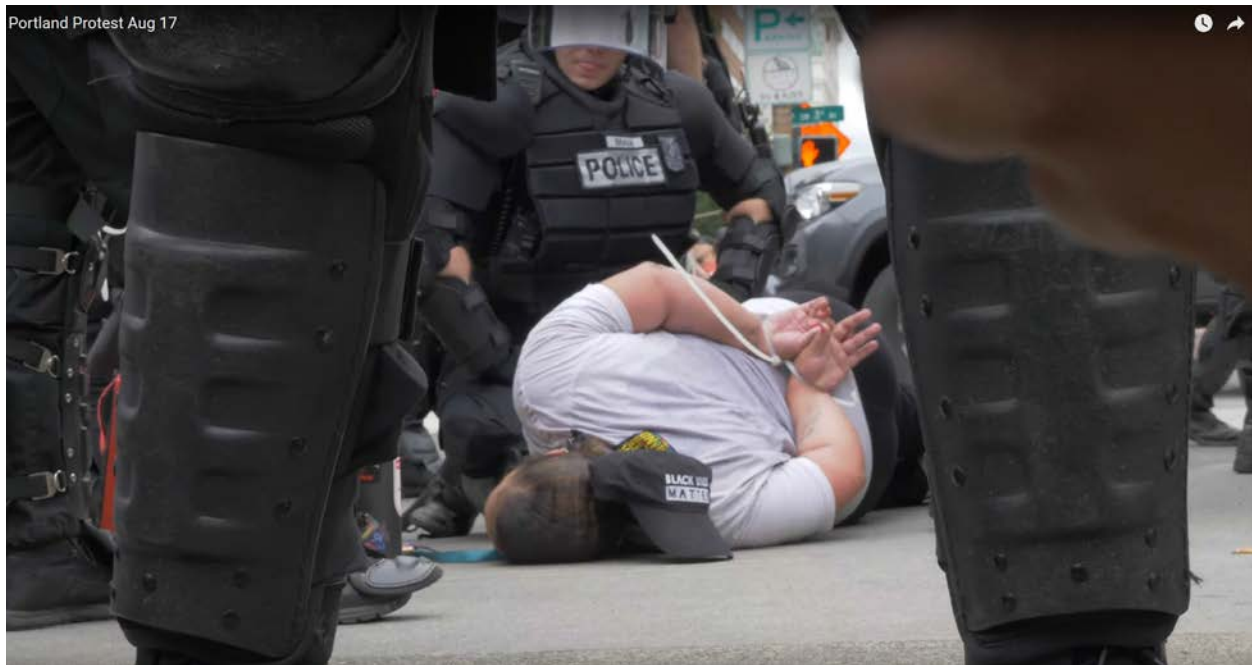


Figure 3: Plaintiff face down on the sidewalk, handcuffed, surrounded by PPB officers.⁴

16.

Upon information and belief, Defendant Green and/or Defendants Green and Le made the decision to arrest Ms. Mitsch. Upon information and belief, Defendants Green, Le, and Braun were the primarily PPB officers who took Ms. Mitsch to the ground and handcuffed her.

17.

Then-Multnomah County District Attorney Rod Underhill's office charged Ms. Mitsch with Disorderly Conduct in the Second Degree, citing that she “unlawfully and recklessly create[d] a risk of public inconvenience, annoyance, and alarm by obstructing vehicular

⁴ Carlos Peralta, *Portland Protest Aug 17* (posted August 18, 2019), YouTube, available at <https://www.youtube.com/watch?v=GleGjvRmk2I> (screen shot of video footage).

traffic on a public way, to-wit: Southwest Oak Street, Portland, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.”

18.

On February 27, 2020, a Multnomah County jury acquitted Ms. Mitsch of the Disorderly Conduct charge.

19.

Ms. Mitsch provided timely notice of her claims pursuant to the Oregon Tort Claims Act, ORS § 30.275.

20.

C. Defendants Racially Profiled Ms. Mitsch and Arrested Her Because She Was a Black Woman Engaging in Expressive Conduct Supporting Black Lives Matter.

Proud Boys and their supporters constitute and have connections with known neo-Nazis and white supremacists. They also have a well-documented history of planning and attending demonstrations in Portland, coming to those demonstrations armed, and with the primary purpose of inciting violence and engaging in violence against Portlanders and those who oppose their neo-fascist, sexist, and white supremacist ideologies and messages.⁵ Despite this, Defendants treat those demonstrators differently and more favorably than those demonstrators like Ms. Mitsch who are protesting white supremacy and the police.

⁵ See PBS Newshour, *Right-wing rally, counter-protesters face off in Portland*, (Aug. 4, 2018) (quoting a Facebook post from event organizer Joey Gibson stating “We’ve always had guns at the rally . . . I cannot think of one rally when we didn’t have guns with us . . . Everywhere we go, we have guns”).

21.

On August 17, 2019, Defendants racially profiled Ms. Mitsch and arrested her because she was a Black woman engaging in expressive conduct supporting Black Lives Matter and critical of the police. For example:

- a. Defendants arrested Ms. Mitsch, a Black woman wearing obvious clothing in support of Black Lives Matter, but did not arrest any of white or non-Black demonstrators near her at the same time who were also in the street;
- b. Defendant Green lied in his police report regarding the circumstances of Ms. Mitsch's arrest, including but not limited to omitting the presence of numerous other demonstrators who were in the street (and therefore ostensibly blocking traffic);
- c. Defendant Green was familiar with Ms. Mitsch prior to arresting her, noting in his police report that he had "noticed [Ms. Mitsch] in many other locations during this protest";
- d. Defendant Le mischaracterized Ms. Mitsch as "stand[ing] in the middle of SW Oak which obstructed our direction of travel" and further mischaracterized that "[t]here were additional civilian vehicles behind us trying to drive through the intersection" when Ms. Mitsch was obviously in a bike lane area, the PPB vehicle was in the bicycle lane, and Ms. Mitsch was not blocking any civilian vehicles;
- e. On August 17, 2019, PPB arrested at least one other counter-demonstrator in retaliation for her expressive conduct which was critical of the police.

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22.

On August 17, 2019, Defendants treated Ms. Mitsch differently and worse than similarly-situated demonstrators who were non-Black and who were not engaging in conduct supporting Black Lives Matter and critical of the police. For example:

- a. Defendants' cited Ms. Mitsch's twerking in the street as grounds to arrest her for blocking traffic, but PPB did not arrest other non-Black demonstrators not engaging in similar expressive conduct who were marching in the middle of the street (and therefore ostensibly blocking traffic);
- b. Upon information and belief, on August 17, 2019, PPB did not arrest any Proud Boys demonstrators for allegedly blocking traffic;
- c. On August 17, 2019, PPB treated Proud Boys demonstrators differently and more favorably than Ms. Mitsch, including: erecting concrete barriers around the site of the rally; placing a heavily armed police presence between those demonstrators and counter-demonstrators—often facing with their backs towards the Proud Boys and towards the counter-demonstrators; and closing down public-right-of-way for their benefit and providing a police escort across the Hawthorne Bridge to the exclusion of the counter-demonstrators.

23.

On several occasions since 2017, demonstrations in support of police and against the Black Lives Matter movement have occurred in Portland. During these demonstrations, Defendants treated demonstrators differently and more favorably than those like Ms. Mitsch demonstrating in support of Black Lives Matter and against police misconduct and white supremacy. For example:

- a. On April 29, 2017; a Patriot Prayer convened a rally in Portland. Patriot Prayer demonstrators displayed weapons and openly supported white nationalists, including Jeremy Christian who attended the event, gave a Nazi salute, and yelled racist slurs including the n-word. PPB did not arrest any of these demonstrators, instead providing TriMet buses and providing police escorts. PPB did, however, arrest three of the counter-demonstrators⁶;
- b. On August 4, 2018, Patriot Prayer and Proud Boys demonstrators were not targeted for arrested, nor were several Patriot Prayer members arrested when found on top of a downtown Portland building adjacent to the counter-demonstrators staging a sniper post with a cache of guns.⁷ Then-PPB Chief Danielle Outlaw proceeded to go on a conservative talk-radio show and disparage counter-protesters for “whine[ing] and complain[ing]” after PPB had “kicked [their] butt”⁸;
- c. On August 22, 2020, many anti-Black Lives Matter protesters descended on Portland, armed with rifles, handguns, paintball guns, metal rods, aluminum bats, fireworks, and pepper spray in an attempt to intimidate and rally against Black

⁶ Doug Brown, *Photos & Videos: Saturday’s Right Wing march, Left Wing Protest in Montavilla*, PORTLAND MERCURY (Apr. 29, 2017) available at <https://www.portlandmercury.com/blogtown/2017/04/29/18983985/photos-and-video-saturdays-right-wing-march-left-wing-protest-in-montavilla/>

⁷ Gordodanin R. Friedman, *Armed Protesters Were on Portland Rooftop in August, Police Now Say*, THE OREGONIAN/OREGONLIVE (posted Oct. 15, 2018; updated Jan. 29, 2019) available at https://www.oregonlive.com/portland/2018/10/armed_protesters_were_on_portl.html.

⁸ Katie Shepherd, *Portland Police Chief Says Protesters Went Off to “Whine and Complain” Last Week Because Officers “Kicked Your Butt,”* WILLAMETTE WEEK (Aug. 15, 2018) available at <https://www.wweek.com/news/courts/2018/08/15/portland-police-chief-says-protesters-went-off-to-whine-and-complain-last-week-because-officers-kicked-your-butt/>.

Lives Matter protestors. PPB did not intervene or arrest those pro-police, anti-Black Lives Matter demonstrators--including Tusitala “Tiny” Toese, who had an outstanding warrant for his arrest and was present and identified by PPB. In contrast, PPB members arrested Demetria Hester, a Black woman and Black Lives Matter leader and volunteer with Don’t Shoot Portland less than two weeks prior.

The above-listed examples of PPB’s history of different and better treatment is not an exhaustive list.

FIRST CLAIM FOR RELIEF
(Fourth Amendment Violation – Unlawful Seizure – 42 USC § 1983
Count 1: Individual Liability Against All Individual Defendants)

24.

Plaintiff realleges and incorporates by reference the above paragraphs.

25.

It is clearly established law that an officer may not seize a person without probable cause or a warrant to arrest them.

26.

In taking the actions described above, including detaining and arresting Plaintiff without probable cause, Defendants intentionally violated Plaintiff’s right to be free from unlawful seizures, a right guaranteed by the Fourth Amendment to the United States Constitution.

27.

The unreasonable seizure of Plaintiff directly and proximately caused her bodily harm and emotional distress in an amount to be determined at trial.

28.

Plaintiff is entitled to reasonable attorney fees pursuant to 42 USC § 1988.

SECOND CLAIM FOR RELIEF
(Fourteenth Amendment Violation – Equal Protection – 42 USC § 1983
Count 1: Individual Liability Against All Individual Defendants)

29.

Plaintiff realleges and incorporates by reference the above paragraphs.

30.

Plaintiff has a right to equal protection under the law without regard to race as guaranteed by the Fourteenth Amendment to the U.S. Constitution in her position as a citizen of the United States.

31.

It is clearly established law that the Fourth Amendment does not allow officers to conduct racially motivated seizures.

32.

By the conduct described above, Defendants Green, Le, and Braun, acting under color of state law, engaged in racial profiling, depriving Ms. Mitsch of her right to equal protection under the law. Defendants acted with the intent or purpose to racially discriminate against Plaintiff by targeting her for arrest and arresting her based on her race as a Black woman, and treating her differently than similarly situated demonstrators who are not Black women nor protesting against white supremacy or in support of Black Lives Matter.

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33.

Defendants' worse and differential treatment of Ms. Mitsch was without a rational basis or without adequate justification.

34.

Defendants' conduct caused Plaintiff bodily harm and emotional distress in an amount to be determined at trial.

35.

Plaintiff is entitled to reasonable attorney fees pursuant to 42 USC § 1988

36.

Count 2: Municipal Liability Against Defendant City of Portland – Ratification

As described above, the acts of Defendants Green, Le, and Braun deprived Plaintiff of interests and rights protected by the Fourteenth Amendment to the United States Constitution.

37.

Defendant City ratified Defendants' above-described conduct, knew of and specifically made a deliberate choice to approve their acts and the basis for it, and/or knew or reasonably should have known this would lead to constitutional violations alleged herein. Defendant City's ratification included but is not limited to reviewing Plaintiff's administrative complaint to the City regarding Defendants act, reviewing and investigating Defendants' acts of targeting and arresting Ms. Mitsch, and determining their conduct was consistent with PPB policies, directives, or law. Further, upon information and belief, Defendants were not disciplined for any of their conduct. Defendant City also ratified Defendants' conduct in a news conference the evening of

August 17, 2019, where Mayor Wheeler thanked the Portland Police Bureau for their conduct, and then-PPB Chief Danielle Outlaw stated she was “proud of the work that was done today” by law enforcement, and praised the arrests made, stating that she believed the arrests that day “allow us to hold those committing violent acts and other crimes accountable, while at the same time deterring others from acting.”

38.

The above-described conduct was a direct and proximate cause of harm to Ms. Mitsch. As a result of Defendants’ unlawful actions, Plaintiff suffered bodily injury, an injury to her sense of self-worth and personal integrity as a result of Defendants’ subjecting her to unequal treatment, and emotional distress amount to be determined at trial.

39.

Plaintiff is entitled to reasonable attorney’s fees and costs pursuant to 42 USC § 1988.

THIRD CLAIM FOR RELIEF
(First Amendment Violation – Retaliation Against Speech – 42 USC § 1983
Count 1: Individual Liability Against All Individual Defendants)

40.

Plaintiff realleges and incorporates by reference the above paragraphs.

41.

As described above, Defendant Green, Defendant Le, and Defendant Braun targeted Ms. Mitsch for arrest not because they had probable cause, but because of her race and based on the content of her protected expressive conduct, which included but was not limited to support for Black Lives Matter, twerking to NWA’s “Fuck Tha Police”, and because they perceived her to be a member of the counter-demonstration against the Proud Boys, police misconduct, and white supremacy.

42.

The First Amendment protects persons from unlawful curtailment of expressive conduct, assembly, and association.

43.

Defendants' retaliatory motive was the but-for cause of Ms. Mitsch's injuries. By arresting Ms. Mitsch, Defendants chilled her political speech and violated her First Amendment rights.

44.

Defendant's retaliation directly and proximately caused Plaintiff bodily harm and emotional distress in an amount to be determined at trial.

45.

Plaintiff is entitled to reasonable attorney fees pursuant to 42 USC § 1988.

Count 2: Municipal Liability

46.

Plaintiff realleges and incorporates by reference the above paragraphs.

47.

As described above, Defendants Green, Le, and Braun violated Plaintiff's rights guaranteed by the First Amendment.

48.

Defendants' conduct alleged above is illustrative of the City's custom and practice of PPB officers violating the First Amendment rights of individuals at protest demonstrations countering white supremacist groups and/or police misconduct. Defendant City of Portland has a custom and practice of using militarized force against

left-wing or antifascist protesters demonstrating against white supremacy and/or police misconduct and in support of Black Lives Matter. Defendants' Fourth and First Amendment violations against such individualizes was and is intended to punish the protestors *en masse* for their political speech against groups such as the Proud Boys, the Portland Police Bureau, white supremacy, fascism, and police misconduct. In contrast, Defendant City of Portland does not use such force and treated and continues to treat more favorably similarly-situated demonstrators *not* protesting against white supremacy, fascism, or police conduct or protesting in favor of Black Lives Matter—as evidenced by Defendants' differential and better treatment of the Proud Boys on the same date.

49.

Defendant's retaliation directly and proximately caused Plaintiff bodily harm and emotional distress in an amount to be determined at trial.

50.

Plaintiff is entitled to reasonable attorney's fees and costs pursuant to 42 USC § 1988.

**FIFTH CLAIM FOR RELIEF
(False Arrest – State Tort – Against Defendant City of Portland)**

51.

Plaintiff realleges and incorporates by reference the above paragraphs.

52.

As described above, Defendant City of Portland intentionally and unlawfully restrained Ms. Mitsch's freedom of movement, causing her arrest and subsequent harm.

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53.

Defendant's intentional conduct directly and proximately caused Plaintiff to suffer bodily harm and emotional distress in an amount to be determined at trial.

54.

Pursuant to ORS 20.107, Plaintiff is entitled to cover reasonable attorney fees.

**SIXTH CLAIM FOR RELIEF
(Battery – State Tort – Against Defendant City of Portland)**

55.

Plaintiff realleges and incorporates by reference the above paragraphs.

56.

As described above, employees and agents of the Defendant City of Portland did unlawfully intend to come into physical contact with Ms. Mitsch and did come into contact with her. Defendant's unlawful and intentional contact with Ms. Mitsch was offensive.

57.

Defendant's intentional conduct directly and proximately caused Plaintiff to suffer bodily harm and emotional distress in an amount to be determined at trial.

58.

Pursuant to ORS 20.107, Plaintiff is entitled to recover reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for her costs and disbursements incurred herein and for the following in accordance with the proof at trial:

1. Economic damages,
2. Non-Economic damages,

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2. Prejudgment and post judgement interest as appropriate and allowed by law,
3. On all claims, as applicable, amounts necessary to offset the income tax consequences of receiving a lump sum payment, rather than receiving payment of wages over the applicable time frame; and
4. Any other relief the court deems proper.

DATED this 17th day of August 2021.

s/ Maya Rinta

Maya Rinta, OSB No. 195058

J. Ashlee Albies, OSB No. 051848

Attorneys for Plaintiff